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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 742 OF ~~2001~~ 2002

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANT Naro alias Narendra S/o Sukhadev, Halba, aged about 38 years, R/o Kanker Lanka Sarpanch Para, P.S. Bhairamgarh, Distt.-Dantewada (C.G.)

Versus

RESPONDENT : State of Chhattisgarh, Through : P.S.-Bhairamgarh, Distt. Dantewada (C.G.)

Present

Mr. Subhash Yadav, counsel for the accused/appellant.
Mr. G.D. Vaswani, G.A. for the State/respondent.

ORAL JUDGMENT
(5th July 2007)

Per Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 26th June 2002 whereby the learned IV Additional Sessions Judge, Jagdalpur in Sessions Trial No. 289/2000 after holding the accused/appellant Naro @ Narendra guilty under Section 302 of the IPC of causing death of Kamlu Telga sentenced him

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to undergo imprisonment for life, pay a fine of Rs.500/-, in default of payment of fine to further undergo six months R.I.

2. Case of the prosecution, in brief, is that wife of the deceased Sukmati lodged a report (Ex.P/1) on 22.3.2000 in Police Station Bhairamgarh, Distt. Dantewada mentioning therein that on Monday (20.3.2000) she was in her home, her son had gone to Dantewada fare and her husband Kamlu had gone to Matopara. Around 2.00-2.30 p.m. the voice of shouting of her daughter Shyambati came from Sarpanch Para that "run, Naro has attacked her father from the blunt side of the axe". She recognizing the voice of her daughter came outside the house along with her younger son Chamsingh and reached there and saw that her husband was lying dead near the house of Sarpanch Sukdev. There was grievous injury on the back side of the head, blood was oozing and her daughter Shyambati was weeping there. On enquiry Shyambati informed that she was under the tamarind tree along with the child, at that time Shiv of the village informed her that Naro @ Narendra is assaulting her Baba (father). Hearing this she rushed there, at that time Narendra assaulted her father, who was lying on the ground, on his head from blunt side of the axe thrice, as a result of which her father sustained grievous injuries and succumbed to the same. Excessive blood was oozing from his head. Around 7.00 p.m. Subernath, Kokekopa, Sonku, Balsingh and Sukdev of the village came there, they saw the dead body of her husband and her daughter narrated the incident to them. On the next day Panchayat was convened and in the said Panchayat persons

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	mentioned above were also present, they called the accused, who came there along with axe and disclosed before the Panchayat that he assaulted Kamlu from the blunt side of the very same axe on his head, as a result of which he died and he surrendered the said axe in the Panchayat. Thereafter, she along with above persons of the village took the dead body of the Kamlu, the axe with which Naro assaulted her husband and Naro to the police station and lodged the report. On the basis of above report offence under Section 302 of the IPC was registered against the accused and the investigation commenced. Merg intimation of Ex.P/12 was registered on the basis of information given by Sukhmati on 22.3.2000. During investigation, after due notice to the witnesses inquest (Ex.P/2) over the person of the deceased was prepared. Site plan was prepared vide Ex.P/4. Bloodstained and plain soil were taken into possession under Ex.P/5. One bloodstained axe was seized under Ex.P/6. Dead body of Kamlu was sent for postmortem examination to Primary Health Center, Gidam where Dr. H.L. Thakur (PW-6) conducted postmortem over the person of deceased and prepared his report of Ex.P/10. Seized articles i.e. weapon of offence axe, bloodstained & plain soil, were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P/13 and report of the F.S.L. is Ex.P/14. After usual investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions Judge, Jagdalpur and the same was received on transfer by the learned Additional Sessions Judge, for trial.	

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3. To establish the charge against the accused the prosecution examined 7 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution case and pleaded innocence and false implication in crime in question.

4. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned above.

5. We have heard Mr. Subhash Yadav, counsel appearing on behalf of the accused/appellant and Mr. G.D. Vaswani, G.A. for the State/respondent.

6. Homicidal death of Kamlu in not in dispute. Even otherwise, from the postmortem report of Ex.P/10 which has been proved by Dr. H.L. Thakur (PW-6), in which he has found two lacerated wounds of size 2" x 3" x 3" on the left temporal region, as a result of which brain material was coming out and on dissection, temporal bone was found fractured and cause of death was opined as excessive hemorrhage & shock and nature of the death was homicidal, it is established that the death of Kamlu was the homicidal in nature.

7. Learned counsel for the accused/appellant argued that conviction is based on the statements of PW-2 Shyambati and PW-3 Subernath. Shyambati has not supported case of the prosecution and she has turned hostile as she has made contradictory statements in

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her examination-in-chief and cross-examination. So far as the evidence of Subernath is concerned, he is said to be a witness of extra judicial confession, however, in view of the fact that mother of the accused had defeated the wife of this witness in a recently held election of the village Sarpanch and that PW-1 Sukmati, wife of the deceased and PW-2 Shyambati, daughter of the deceased, who were admittedly present in the Panchayat, have categorically stated that the accused did not make any confessional statement before the said Panchayat, version of Subernath regarding extra judicial confession cannot be relied upon.

8. On the other hand, learned counsel for the State supported judgment of the trial Court.

9. Conviction of the accused/appellant is based on the statements of PW-2 Shyambati and PW-3 Subarnath. Shyambati is stated to be an eyewitness of the incident whereas Subernath is a witness of alleged extrajudicial confession. PW-1 Sukmati, wife of the deceased, has stated that her husband had gone to Matopara on the date of incident where her daughter Shyambai resides. When her husband was assaulted Shyambati came weeping and informed that the accused has assaulted Kamlu. Kamlu was assaulted near the house of Naro, she went to the place of incident and found that her husband had already died. He had received injuries over head and left cheek. Shyambati resides near the place of incident. Shyambati had seen the assault and narrated to her. When she reached there except her

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husband nobody was present there. In paragraph 3 of her evidence she has stated that Panchayat was convened where the accused also came as he was called, the accused came along with the axe. After Panchayat she returned her home. The accused did not disclose anything before Panchayat in her presence. In her cross-examination she has admitted that the accused is son of the Sarpanch, however, she has denied the suggestion that since they have quarrel with the Sarpanch, therefore, they are implicating the accused in this case. In paragraph – 9 she has admitted that mother of the accused and the wife of Subernath had contested the elections of village Sarpanch and in the said election mother of the accused had won.

10. PW-2 Shyambati, daughter of the deceased, has stated that on the date of incident she was sitting under the tamarind tree along with her child. At that time Shiv of his neighbourhood came running and informed that the accused is beating her father with legs and fists. Hearing this, she rushed towards the place of incident and asked as to who is assaulting her father. The accused took out the axe and assaulted her father thrice with it and thereafter, left the place of occurrence. Her father sustained injury on the right side of his head on only one place. He shouted and called her mother whereupon her mother Sukmati and brother Cham Singh came there, she informed them that the accused after assaulting has run away. Other persons of the vicinity also came there including her husband Jailal, it was 12-1 noon. In the evening Panchayat was convened in which the accused also came there along with axe and in Panchayat the accused said "I

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have spoiled the matter, I will go to police station". She has further stated that there was no quarrel and she does not know why the accused assaulted. In paragraph 6 she has stated that it is true to say that in Panchayat the accused stated that he has been falsely implicated, he has not murdered. It is correct to say that in Panchayat the persons (villagers) told that "you have committed murder, come to police station" and took the accused to the police station. However, in paragraph 15 of the cross-examination she has categorically stated that she had not seen the accused Naro assaulting her father and whatever she stated earlier regarding the accused assaulting her father before her, is not correct and she has further stated that in Panchayat the accused did not make any confessional statement.

11. PW-3 Subernath, has stated that father of the accused Sukdev, Sarpanch, came to his house and informed him that his son Naro has assaulted Kamlu with axe, as a result of which Kamlu has died. Thereafter, he along with Sarpanch went to the place of occurrence where dead body of Kamlu was lying and there were injuries over his head. Shyambati, Sukmati and the son of Sukmati namely Cham Singh were also sitting near the dead body. He has further stated that on the next day of death of Kamlu, Panchayat was convened and in the Panchayat Sukmati, Shyambati were called. In Panchayat Shyambati was asked as to who murdered Kamlu, on which Shyambati replied that Naro has assaulted with axe. Thereafter, Naro was also called in the Panchayat. Naro came in the Panchayat with axe and disclosed in Panchayat that he has assaulted Kamlu with axe

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	on his head. This witness has admitted that his wife contested Panchayat election unsuccessfully against the mother of the accused. 12. Thus, from the evidence of alleged eyewitness Shyambati, it is evident that she had made contradictory statements regarding the fact that she had seen the incident of assault. At one place, she stated that she had seen the accused assaulting her father, however, in her cross-examination she denied that she saw the incident and stated that when she reached the place of occurrence, her father was lying dead. PW-1 Sukmati, wife of the deceased, who was present in the Panchayat has categorically stated that the accused did not make any confessional statement in her presence before the Panchayat. Even Shyambati has also stated in the cross-examination that the accused did not make any confessional statement before the Panchayat. Relying upon the statements of PW-1 Sukmati and PW-2 Shyambati, if we scrutinize the statement of PW-3 Subernath, we are unable to accept the version given by this witness firstly on the ground that it is highly improbable that father of the accused would come to him and disclose that his son has murdered Kamlu in view of the fact that his wife had contested elections against the wife of this witness and secondly, that the version given by this witness has not been supported by PW-1 & PW-2. Therefore, we are of the considered opinion that it would not be safe to base the conviction on the alleged extrajudicial confession made by father of the accused as stated by PW-3 Subernath. Rest of the prosecution witnesses have not supported the prosecution case and they have turned hostile.	

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	13. On the basis of aforesaid analysis, we are of the considered opinion that the prosecution has failed to establish the involvement of the accused/appellant in crime in question beyond reasonable doubt and findings of the trial Court in this regard cannot be sustained. 14. In the result, the appeal succeeds. Conviction of the accused/appellant under Section 302 of the IPC and sentence imposed thereon, are set aside. He is acquitted of the above charge. He is directed to be set at liberty forthwith if not required in any other case. **Sd/-** **Dhirendra Mishra** **Judge** **Sd/-** **L.C. Bhadoo** **Judge**	